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EXAMINER

RENDON, CHRISTIAN E

ART UNIT PAPER NUMBER

3714

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/667,923

Applicant(s)

AMAITIS ET AL.

Examiner

Christian E. Rendón

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>01/20/04</u> . | 6) <input type="checkbox"/> Other: _____  |

***Information Disclosure Statement***

The information disclosure statement filed on 01/20/04 fails to comply with the provisions of 37 CFR 1.98(b)(5) and MPEP § 609 because References O and P on page 1 and References Q, N, and O on page 2 were listed without a date. Examiner had filled in the date of the NPL Documents based on what can be deciphered of the scanned copy. However, applicant is advised to review submission of any item of information contained in this information disclosure statement and make appropriate corrections. The examiner initials of these documents indicate that the examiner had considered them on the merits. For future references, Applicant is advised to comply with all the requirements of 37 CFR 1.97, 1.98 and MPEP 609 when filing an IDS.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 6-7, 9-17, 19-20, and 22-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Downes (U. S. Pub. No 2003/0199315). Downes discloses a pari-mutuel sports wagering system that involves pari-mutuel wagering on the performance statistics of sports teams, individual sports players, athletes, or groups of players. Downes discloses a pari-mutuel sports wagering system where a player may place

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wagers based on a player's statistical rank compared to players of the same position over a single game, week, month, pre-season, quarter season, half season, or full season. Downes system is equally compatible with other sports and events, such as, golf, tennis, soccer, racing, etc. Downes discloses a system and method directed to:

Regarding Claims 1 and 17:

- receiving one or more first type of bets, each first type having an associated bet amount and comprising a bet that the total number of units earned by a particular participant over a course of a plurality of events will fall within a first range of numbers, the particular participant selected from a plurality of participants each participating in at least one of the plurality of events (Paragraphs 74-75, 82-95, 204-253); The first bet may be associated with quarterbacks in football that earn a number of units based upon number of completed passes in a season.
- receiving one or more second type of bets, each second type of bet having an associated bet amount and comprising a second bet that the total number of units earned by the particular participant in the plurality of events will fall within a second range of numbers (Paragraphs 74-75, 82-95, 204-253); The second bet may be associated with linebackers in football that earn a number of units based upon the number of quarterback sacks in a season.
- determining the total number of units earned by the particular participant based at least in part on the positioning of the particular participant in each of the plurality of events (Paragraphs 74-75, 82-95, 204-253); The positioning may be the rank of the quarterbacks/linebackers over the season.

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- determining whether the first type of bets or the second type of bets are winning bets based at least in part on whether the total number of units earned by the particular participant falls within the first range of numbers or the second range of numbers (Paragraphs 74-75, 82-95, 204-253); Determining whether the bets are winning bets may be based upon the quarterback/linebackers that earn the most units over the season. So each of the position players with the highest rank within a particular position with the most units earned at the end of the season would be winning bets.
- determining a betting pool based at least in part on the total of the bet amounts associated with the first type of bets and the total of the bet amounts associated with the second type of bets (Paragraphs 74-75, 82-95, 204-253); and
- determining an amount of a payout based at least in part on the betting pool and the total of the bet amounts associated with the winning bets (Paragraphs 74-75, 82-95, 204-253).

Regarding Claim 2:

- wherein the number of units earned by the particular participant comprises the amount of money earned by the particular participant during the course of the plurality of events (Paragraphs 74-75, 82-95, 204-253). This would be applicable to the highest money winners such as in the PGA golf championship and USTA tennis etc.

Regarding Claim 3:

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- wherein the plurality of events comprises a plurality of horse races and the plurality of participants comprises a plurality of jockeys (Paragraphs 74-75, 82-95, 204-253).

Regarding Claim 4:

- wherein the plurality of events comprises a plurality of races and the plurality of participants comprises a plurality of drivers (Paragraphs 74-75, 82-95, 204-253).

Regarding Claims 6 and 19:

- receiving one or more third type of bets, each third type of bet having an associated bet amount and comprising a third bet that the total number of units earned by the particular participant in the plurality of events will fall within a third range of numbers (Paragraphs 74-75, 82-95, 204-253); The third bet may be associated with running backs in football that earn a number of units based upon the number of yards gained rushing in a season.
- determining the betting pool based at least on the total of the bet amounts associated with the first type of bets, the second type of bets and the third type of bets (Paragraphs 74-75, 82-95, 204-253); and
- determining whether the first type of bets, the second type of bets, or the third type of bets are winning bets based at least on whether the total number of units earned by the particular participant falls within the first range of numbers, the second range of numbers, or the third range of numbers (Paragraphs 74-75, 82-95, 204-253).

Regarding Claims 7 and 20:

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- receiving one or more fourth type of bets, each fourth type of bet having an associated bet amount and comprising a fourth bet that the total number of units earned by the particular participant in the plurality of events will fall within a fourth range of numbers (Paragraphs 74-75, 82-95, 204-253); The fourth bet may be associated with defensive backs in football that earn a number of units based upon the number of interceptions in a season.
- determining the betting pool based at least on the total of the bet amounts associated with the first type of bets, the second type of bets, the third type of bets, and the fourth type of bets (Paragraphs 74-75, 82-95, 204-253); and
- determining whether the first type of bets, the second type of bets, the third type of bets, or the fourth type of bets are winning bets based at least on whether the total number of units earned by the particular participant falls within the first range of numbers, the second range of numbers, the third range of numbers, or the fourth range of numbers (Paragraphs 74-75, 82-95, 204-253).

Regarding Claims 9 and 22:

- determining the positioning of the particular participant in that event (Paragraphs 74-75, 82-95, 204-253); and
- determining a number of units earned by the particular participant based at least on the positioning of the particular participant in that event (Paragraphs 74-75, 82-95, 204-253).

Regarding Claims 10 and 23:

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- determining the positioning of the particular participant in the event (Paragraphs 74-75, 82-95, 204-253); and
- determining a number of units earned by the particular participant based at least on the positioning of the particular participant in the event and a unit distribution structure defining a distribution of units over a plurality of positions in the event (Paragraphs 74-75, 82-95, 204-253).

Regarding Claims 11 and 24:

- wherein the unit distribution defining a distribution of a (Paragraphs 74-75, 82-95, 204-253).

Regarding Claims 12 and 25:

- structure comprises a purse distribution structure purse over a plurality of positions in the event after one or more of the plurality of events has occurred, receiving a third type of bet having an associated bet amount and comprising a bet regarding the total number of units earned by the particular participant in the plurality of events excluding the one or more events that have occurred (Paragraphs 74-75, 82-95, 204-253).

Regarding Claims 13 and 26:

- wherein the third type of bet locks in a particular gain or loss associated with one of the first type of bets (Paragraphs 74-75, 82-95, 204-253).

Regarding Claims 14 and 27:



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- after one or more of the plurality of events has occurred, for a particular one of the first type of bets: receiving a request to settle the bet (Paragraphs 74-75, 82-95, 204-253);
- determining an amount of a settlement payment for the bet based at least in part on the positioning of the particular participant in each of the one or more events that has occurred (Paragraphs 74-75, 82-95, 204-253);
- paying out the settlement payment (Paragraphs 74-75, 82-95, 204-253); and
- canceling the particular bet (Paragraphs 74-75, 82-95, 204-253).

Regarding Claim 15:

- wherein the plurality of events occur over an extended period of time (Paragraphs 74-75, 82-95, 204-253).

Regarding Claim 16:

- wherein the plurality of events occur over a period of time greater than one week (Paragraphs 74-75, 82-95, 204-253).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 8, 18, 21, and 28-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downes (U.S. Pub. No 2003/0199315) in view of Scarne. Downes discloses that as discussed above with regards to claims 1-4, 6-7, 9-17, 19-20, & 22-27.

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Regarding Claims 5, 18, 28, and 42:

- determining an index number representing a predicted total number of units earned by the particular participant in the plurality of events;
- defining the first range of numbers as the range of numbers between the index number and a number less than the index number; and
- defining the second range of numbers as the range of numbers between the index number and a number greater than the index number.

Regarding Claims 8 and 21:

- determining an index number representing a predicted total number of units earned by the particular participant in the plurality of events; and
- determining the first range of numbers, the second range of numbers, and the third range of numbers based at least in part on the index number.

Scarne, like Downes, also relates to pari-mutuel type wagering, as well as, other gambling games. Furthermore, Scarne discloses an under and over bet used in sports betting which could be applied to Downes above (Pages 132J133). Scarne teaches:

Regarding Claim 5, 18, 28, and 42:

- determining an index number (under and over number) representing a predicted total number of units earned by the particular participant in the plurality of events (Pages 132-133);
- defining the first range of numbers as the range of numbers between the index number and a number less than the index number (The number may be

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associated with quarterbacks in football that earn a number of units based upon number of completed passes in a season.) (Pages 132-133); and

- defining the second range of numbers as the range of numbers between the index number and a number greater than the index number (The second number may be associated with linebackers in football that earn a number of units based upon the number of quarterback sacks in a season.) (Pages 132-133).

Regarding Claims 8 and 21:

- determining an index number representing a predicted total number of units earned by the particular participant in the plurality of events (Pages 132-133); and
- determining the first range of numbers, the second range of numbers, and the third range of numbers based at least in part on the index number (Pages 132-133).

It would have been obvious for one having ordinary skill in the art at the time of Applicant's invention to incorporate Scarne's over and under bet in Downes. For instance, an over and under bet could be used to determine a winner of a bet based upon a quarterback throwing a certain number of touch downs above or below a predetermined number over an entire season. One would be motivated to incorporate this type of wager in Downes in order to increase the excitement and number of possible wagers available to a player in a wagering game.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A

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nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Omum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-5, 9-11, 14-18, 22, 26, 42, and 45-49 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-23 of copending Application No 10/667,755. Although the conflicting claims are not identical, they are not patentably distinct from each other. From here on Application No 10/667,755 will be referred to as 'Case B.' Applicant argues that Case B does not disclose, "receiving a bet" or the "total number of units earned" except these are an implied step in any betting system. Case B teaches a bettor winning when their 'quote' exceeds an upper index number and matches the 'total number of units earned by the participant in the plurality of events' (Case B: Claim 2). Since Case B's betting events can have various lengths, over an extended period of time, it would be considered a disfavor to a winning bettor to make them wait until the end of the time period to collect their winnings and this also increases the possibility of a winning bettor not having to share the betting pool with other winners. Therefore it is implied in Case B's claim language that a bettor has to exceed the index before their competition.

This is a provisional obviousness-type double patenting rejection.

***Response to Arguments***

1. Applicant's arguments filed on 11/02/2006 with respect to the Double Patenting are found to be partially persuasive. The arguments with regards to claims 1-68 of copending Application No. 10/836,999, claims 1-22 of copending Application No. 10/453,761, claims 1-29 of copending Application No. 10/453,557, and claims 1-19 of copending Application No. 10/062,745 are found to be persuasive and the respective Double Patenting rejections are withdrawn. The arguments with regards to claims 1-23 of co-pending Application No. 10/667,755 are not persuasive thus the obvious double patenting are maintained and detailed herein above.
2. Applicant's arguments filed on 11/02/2006 with respect to the 102 and 103 rejections have been fully considered but they are not persuasive. The applicant argues, Downes fails to disclose, teach, or suggest every element of Claims 1, 2, 14, and 17; therefore these Claims are allowable. The examiner is not persuaded by this argument for the following reasons.
3. Downes discloses a "pari-mutuel wagering system" that allows the bettor to use their knowledge of the sport to speculate from a plurality of players (Downes: par 207) the one who will achieve the hypothesized statistical performance (Downes: par 228) or 'total number of units earned' at the end of any number of games (Downes: par 210-216) or plurality of events. The scores are then used to establish a range of numbers in order to rank the players and determine a place of finish (Downes: par 228). Downes's betting system comprises of "at least one processing element" (Downes: Claim 25) to accept the wagers, calculate the participant's score or "total number of units earned,"

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determine the winners and calculate the payout. Even though a memory system is not mentioned by Downes someone of ordinary skill in the art of computing would know that a memory system is implied because it is required for the system to fully work. Downes discloses, "a plurality of different statistics may be employed to determine rank"

(Downes: par 252, line 7) therefore prize money earned by a participant is a statistic that is taught by Downes as a means to determine the participant's score or "number of units earned."

4. It is well known in the art of gambling that there are no restrictions preventing the bettor from placing multiple bets on the same event, especially in a pari-mutuel betting system since the size of the winning pool is dependant of the total amount of money that is wagered. It is also well known in the art of gambling that a bettor can also have the option of placing what is called an "exotic bet" in a pari-mutuel betting system (Scarne: pg 86). There are several variety of exotic bets but they all allow you to associate more then one participant in the same game or in different games on the same bet or ticket. Therefore the applicant's claims towards "receiving one or more second type of bets" and receiving any other number of bets are considered obvious and unpatentable. Furthermore any claims in reference to "determining a betting pool" based on the different "type of bets" and/or the total bet amounts are considered obvious to one of normal skill since that is how a pari-mutuel system works. More over any claims in reference to "determining the total number of units earned," determining which type of bet is a winning bet and "determine an amount of a payout" are also considered obvious and unpatentable since they are also taught by the pari-mutuel

betting system. The applicant's claim to receiving a request to settle a bet (Claim 14) and canceling the bet once a payout is calculated and presented is also considered unpatentable for the reason that this is a well known procedure in the art of gambling.

5. Now that the reasoning behind the 102 rejections of claims 1-4, 6-7, 9-17 and 22-27 has been clarified, it stands to reasons that the 103 rejections of claims 5, 8, 18, and 21 as being unpatentable over Downes in view of Scarne are also maintained. With regards to claims 28-52, Downes teaches all the limitations as detailed herein supra except for "will exceed a particular index number before the number of units earned by any other of the plurality of participants exceeds the particular index number" (Claim 28) and any other statements referring to exceeding a particular index. On the other hand Scarne teaches a form of betting known as an "Under and Over Bet" (Scarne: pg 132-133). The bettor is offered by the "bookie" a range of numbers and the bettor decides to bet that on the results being either less than the smallest number or greater than the largest number. Therefore through an "over bet" a bettor wins when their bet "exceeds" the largest number. Furthermore, it would have been obvious, to one of ordinary skill in the art of gambling to combine Downes with Scarne and to include an ending condition like 'the bettor has to exceed the index before any other bettor.' Since a betting event in Downes's pari-mutuel betting system can have various lengths, one game or a whole season, it would be considered a disfavor to a winning bettor to make them wait until the end of time period to collect their winnings and this also increases the possibility of a winning bettor not having to share the betting pool with other winners.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christian E. Rendón whose telephone number is 571-272-3117. The examiner can normally be reached on 9 - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan M. Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christian E Rendón  
Examiner  
Art Unit 3714

CER

  
XUAN M. THAI  
SUPERVISORY PATENT EXAMINER  
TC3700